



One of the original homes in Cabin John Gardens, a housing cooperative created in 1956 and probably Montgomery County's first common ownership community.

# CCOC COMMUNICATOR

## USING TAX BASIS ADDITIONS AS A WAY TO REDUCE CAPITAL GAINS TAXES ON SALE OF HOME

By Howard A. Goldklang, CPA, and S. Gail Moore, CPA

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When you sell your home you may be faced with a taxable gain. A gain or loss on your home is determined by the selling price minus the adjusted cost basis in the home. Improvements to your property will increase the basis in your home.

For condominium owners and homeowner association members, increases in basis may occur in two ways:

### 1. Any specific improvement to your unit.

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## CCOC TOSSES OUT SECOND CONDO ELECTION IN TWO MONTHS

In our last issue (Spring, 2018) we reported the CCOC's decision in *Jones v. Georgian Colonies Condominium Ass'n*. CCOC #40-17 (May 26, 2018). In that case the hearing panel held invalid a disputed election because the election notice sent out by the board was improper and as a result all decisions made by the newly-elected board at its meeting immediately following the election were also invalid. Less than a month later, another CCOC hearing panel has invalidated a disputed election because of the use of improper proxy ballots and confusing ballot-counting procedures that made it impossible to determine the accuracy of the vote tallies.



In the most recent case, *Tavens v. The Willoughby Condominium of Chevy Chase*, CCOC No. 2018-072 (June 22, 2018), the Condo's election notice was not the problem but its ballots were. To

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# A Reminder of Some of the Notices that Associations Must Give Annually

By Jason Fisher

From long experience serving community associations, I can sympathize with directors and managers who feel so overwhelmed by the many laws governing their associations that they start to lose track of what they must do. To help you out, I've put together a short list of five of the most important notices that you must give to your members and to the CCOC.

## 1. *Elections: Informing the Members of the Who, the How, and the When*

As another article in this issue demonstrates (see page 1), defective election notices and sloppy election procedures can result in a finding that the election is invalid and must be done all over. This is avoidable if the board and its manager work together to plan for the election well before it will be held.

In addition to the requirements set forth in the community's Bylaws, Section 10B-17 of the Montgomery County Code imposes very specific requirements for doing an election correctly.

\*Notice of the Election – the association must notify all members at least 10 days but no more than 90 days before an election of the directors of the association. The notice must explain the election procedures and the date of the election.

\*Under County law for new communities where the developer is still in control, the initial election for the board must be held not later than 60 days after the date that 50 percent of the units have been conveyed by the developer to the initial purchaser. Specifically, the provision provides:

Election dates and procedures. Not less than 10 nor more than 90 days before an election for the governing body of an association, the governing body must notify all members of the association of election procedures and the date of the election. An initial election for the governing body must be held not later than 60 days after the date that 50 percent of the units have been conveyed by the developer to the initial purchasers. (But see Note at the end of this article.)

## 2. *Proposed Annual Budgets*

Owners have the right to have advanced review of an association's proposed annual budget, before it is voted upon and approved. While there are nuances among the types of community associations, the following general rules apply and should be followed to prevent issues for failing to comply. To be safe, associations should be mindful that communication and transparency with the owners is best.

Both the HOA and Condominium Acts specifically require that the notice be sent at least 30 days before the budget is going to be voted on for adoption by the Board (or unit owners—as required by some documents). For Cooperatives, the Bylaws will typically specify the timing. Other requirements for the actual meeting include allowing the owners to attend an open meeting where it will be discussed and providing the owners the ability to provide comments *before* it is voted upon.

After the approval of the budget, another notice to the owners is required to be provided prior to the implementation of the new fees. The specific timing of that notice is specified by the governing documents. In most instances, however, the Bylaws require 30 days' notice before the first payment is due.

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# CCOC ROLLS OUT UPDATE TO DIRECTOR TRAINING CLASSES

By Mark Fine, CCOC Chairperson

The Commission on Common Ownership Communities (CCOC) unveiled its 2018 update to the mandatory Board of Director Training Program at its Town Hall meeting at the Silver Spring Civic Center this spring.

When students register for a class, they will receive a workbook to use with the program presentation. There are six chapters included in the training, and after each chapter, there is a “check for knowledge” quiz.

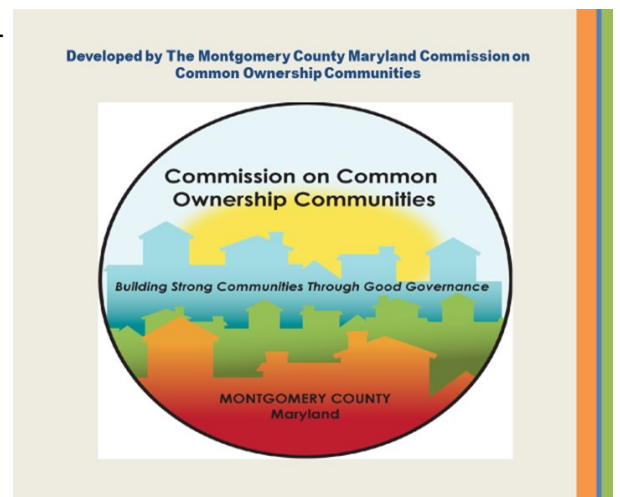
These chapters include: **I.** What is a Common Ownership Community; **II.** Ethics; **III.** Legal Structures, Governing Documents and the Business Judgment Rule; **IV.** Financial Management, Budget Reserves, Collections etc.; **V.** Administrative Procedures, Board Functions, Committees and Elections; and finally **VI.** Conducting Meetings.

We also have reference material in each chapter so that students can go back and refresh their knowledge at any time, and have identified all appropriate videos to the subject matter at the bottom of the page in the workbook and give directions on to access them.

The workbook will be freely available online, we can email it upon request, and we will also have a printed version.

We are in the process of revising the on-line version of the class, and will have the new version available very soon. If anyone wishes to take the new on-line version, we ask that they contact the CCOC office at [ccoc@montgomerycountymd.gov](mailto:ccoc@montgomerycountymd.gov) so that we may send them the workbook before they start the on-line program. The workbook will assist them with their training and is available free of charge.

Both programs take approximately 2.5 -3 hours to complete. Should you wish to schedule a class at your Association, feel free to email the Commission at the email address above.



## Sign Up for eSubscribe!

If you don't receive this newsletter and other CCOC news by email, you can do so by signing up for the County's email services. Simply go to <http://www.montgomerycountymd.gov/govdelivery> and open an account (if you don't already have one), and follow the instructions to select the CCOC. The CCOC is part of the Department of Housing and Community Affairs.



# TAX BASIS ADDITIONS

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Examples include installing a hardwood floor or remodeling/upgrading a kitchen in the home.

## 2. Improvements that the condominium and homeowner associations make to the overall property.

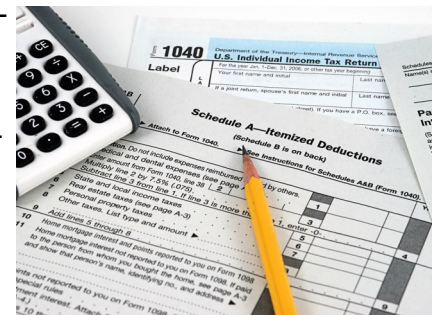
Examples might be roof replacement; alterations or additions to the community's property such as adding a tennis court or a playground. The key is that it is a capital replacement or improvement that adds to the life of the asset, and it has a life greater than one year. If the expenditure meets the appropriate requirements then the unit owner can add their percentage interest portion to their basis thereby reducing their potential profit in the sale of their unit—and thus reducing their capital gains tax as well.

In addition to *expenditures* made by the individual unit owners, an Association could advise its member owners that they might be able to add to their basis their percentage interest in the annual *contribution* to replacement reserves from their operating budget. This would be appropriate where the Association has a capital replacement reserve fund based on a prepared reserve study. As long as the contribution to the fund is capital in nature, the unit owners can add their percentage interest in the annual contribution to their basis.

It must be remembered that any contributions related to an *operating reserve* or a *contingency reserve*, and any contribution made for *maintenance* items (e.g., painting) must be eliminated from the allocation and will not increase basis. If expenditures are made from replacement reserves for items that are not capital in nature, then the contribution should be reduced by that amount. For example, if the budgeted contribution was \$300,000 but a \$50,000 painting project was funded from replacement reserves, then the net contribution eligible for basis increase would be \$250,000 times each unit's percentage interest.

The use of tax basis additions as a way of reducing the possible capital gains taxes on residential units is not limited to condominiums. Members of homeowner associations and of housing cooperatives can also benefit from this deduction when the association spends money for qualified capital repairs and improvements to the property owned by the association.

How can member owners obtain this information? The best way is to have the association request its accountant to provide an annual tax basis letter identifying the total potential addition to the current tax basis for qualified expenses and contributions to capital reserves. Owners should then save those letters with other documents relevant to the purchase and improvement of their homes.



Howard A. Goldklang, CPA, and S. Gail Moore, CPA, are principals of the Goldklang Group CPAs, P.C.. The Goldklang Group is one of the area's leading CPA firms specializing in providing audit and tax services to common ownership communities, with 40 years of experience and a staff of nearly 50 employees. For more information visit [www.GGroupCPAs.com](http://www.GGroupCPAs.com). The opinions expressed in this article are those of the authors and do not necessarily represent the opinion of the CCOC.

## CCOC TOSSES OUT SECOND CONDO ELECTION IN TWO MONTHS

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begin with, the proxy ballots contained the member's vote on one side, and the member's unit number on the other side. This made it necessary for the Condo to open these ballots before the election meeting began in order to determine if there was a quorum. (Each unit had a different percentage of ownership so not all votes had the same weight.) This practice not only violated the secrecy of the ballots but violated Chapter 10B of the County Code, which prohibits opening ballots until the time for voting closes.

To make matters worse, there were problems counting and evaluating the ballots, and numerous recounts resulted in different results, with 762 ballots counted at the election and 804 ballots counted in the 4th and final recount. The hearing panel concluded that it could not confirm the results of the election. "It is not the role of the Commission to recount ballots that have admittedly been modified by one or more entities changing codes or percentages purportedly to correct errors and for which the chain of custody cannot be certified. The original election process was not conducted in accordance with generally accepted standards and must be set aside," the panel wrote. The panel also stated that the integrity of the election process was especially important because it took place during a time of major controversy within the association itself.

The panel ordered the Condo to hold a new election, supervised by an independent agency such as the League of Women Voters and using a management firm that had the ability to handle a complex voting system. (The panel members were Dinah Stevens, Michael Burrows and Aimee Winegar.)

## ELECTION ASSISTANCE FROM THE CCOC

Association annual elections can be complex but serious mistakes are unnecessary and can be avoided through careful review of the relevant association documents, reading the advice and materials offered by the CCOC, and then careful, step-by-step planning.

One source of information is Chapter 3 of the CCOC's online *Manual and Resource Guide* (2017), which deals extensively with annual elections as part of its discussion of proper meeting procedures. Among other things, this chapter discusses how to preserve voter privacy in the use of proxy and absentee ballots.

Sample election forms and checklists are also online in the package *How to Hold an Annual Election*, which is listed under the general heading of "Association Resources."



## **A Reminder of Some of the Notices that Associations Must Give Annually**

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### **3. Condominiums: Notice to Members of Liability for Master Insurance Deductible**

Section 11-114 of the Maryland Condominium Act requires the Board/management to annually inform unit owners of the individual owner's responsibility for the Condominium's Master Insurance Policy property insurance deductible, as well as the amount of the deductible.

The reason this notice is important is because, in a condominium, unit owners can be liable for some or even all of the costs of repairing damage to their unit, other units or even the common elements if the cause of the damage originates in their unit, *even if the owner was not at fault in causing the damage*. It is a "strict liability" law. If the cause of the damage comes from an individual unit, that owner is liable for the first \$5,000 of any repairs not covered by the master insurance policy. If the master insurance policy deductible is \$5,000, then the owner pays for the repairs up to the maximum of that \$5,000; if the cost of repairs is less, the owner pays it all.



In addition, members should be reminded that the Master Insurance Policy does not cover their unit's "improvements, betterments or personal property." So, the association is generally not liable for damage to a member's grand piano or costly Persian rug even if the damage is caused by some defect in the common elements. This means that owners would be foolish if they didn't take out their own homeowner insurance to cover those items and their substitute living expenses.

The notice might also state that the association highly recommends that unit owner policies include a special rider, referred to in the industry as an "HO6" policy, to cover the owner's portion of the Master Insurance Policy Deductible. So, for example, if the Master Insurance Policy Deductible portion that is the obligation of the unit owner is \$5000, typically, the HO6 Policy would pay that amount on behalf of the unit owner, less the individual owner's portion of their HO6 deductible, which may only be \$250.00. Without the HO6 rider, a unit owner may have to pay his share of the Master Insurance deductible in cash and on short notice.

### **4. Notice to Members of the CCOC**

Condominiums, Homeowners Associations and residential Co-Operatives in Montgomery County are required to advise owners annually about the existence of the Montgomery County Commission on Common Ownership Communities. Section 10B-7A of the Montgomery County Code specifically provides:

The governing body of a community association must, at least annually, distribute information in a form reasonably calculated to notify all owners about the availability of dispute resolution, education, and other services to owners and residents of common ownership communities through the Department and the Commission. The governing body may satisfy this requirement by including with any annual notice or other mailing to all members of the community association any written materials developed by the Department to describe the Commission's services.

This requirement is very simple for associations to meet. In fact, the CCOC has done most of the work for you by providing form language on its website to use (both a "long form" and "short form"), which allows

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## A Reminder of the Notices that Associations Must Give Annually

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you to simply copy and paste the required information into the association's Annual Meeting or Budget Notice, which all associations are required to send anyway each year. The reason for having this notice is to ensure owners within community are aware of the CCOC's education and dispute resolution offerings. Practically speaking, all associations (and indirectly the owners that pay fees), pay an annual registration fee to support the CCOC, so owners should be aware of—and able to take advantage of—the resources it has to offer.

### 5. Board Member Education Report to the CCOC

All newly elected Board members of a community association must get the required training within 90 days after being elected or appointed to the Board for the first time. An often-missed requirement is for the association to provide proper verification to the CCOC that the Board members completed the training. The verification under Section 10B-17(h) requires that the Association:

- (1) certify that each member has successfully completed this training to the Commission;
- (2) retain a copy of the certificate of completion for inspection by the members of the association for the duration of the governing body member's service; and
- (3) report to the Commission no later than December 31 of each year membership data required by the Commission, including
  - (A) the name and address of each member of the board;
  - (B) the date each member completed the required training;
  - (C) the number of vacancies on the board; and
  - (D) the length of time each vacancy existed.

The consistent themes established through the requirements highlighted above are transparency, being proactive in communicating information, and fairness. When it comes to operation and governance of community associations, remember to also consider the practical application of the requirements and good old common sense.

**Note:** Concerning election notices, there appears to be a conflict between County and State laws for new homeowner associations (but not condominiums or cooperatives). County law (Section 10B-17) states that new associations must hold elections once 50% of the homes have been sold to private owners; but State law (Section 11B-1016.1 of the HOA Act) says that unless the Bylaws provide otherwise, a new HOA must call the election within 60 days after 75% of the homes have been sold to private owners. Which law should the HOA obey? In my experience, HOAs usually obey the State law, and I doubt the County intended to create a conflict with the State law. Any HOA faced with this situation should consult its attorney once it reaches the 50% level.

Jason Fisher is the principal and founder of Fisher CAC, where he serves as a professional consultant to community associations, management companies, individuals and developers. He is a former president of the Washington, DC Chapter of the Community Associations Institute.

## Private Sources of Information & Assistance for Common Ownership Communities

The CCOC, as a government agency, is sometimes limited in the kinds of services it can offer to the public. Fortunately, there are private organizations that can supplement the CCOC's efforts with their own programs.

Chief among these is the Washington Metropolitan Chapter of the Community Association Institute (WMCCAI). WMCCAI not only offers excellent education programs, it also can lobby for improvements in County, State and Federal laws, and it has lists of professionals who specialize in common ownership services of all kinds. Its website is [www.caide.org](http://www.caide.org).

A new entry into this field is End the Condo Crisis, [www.endcondocrisis.org](http://www.endcondocrisis.org). This group focuses on improving the lot of common ownership communities, especially master-metered condominiums, in Montgomery County, and in bringing their problems to the attention of lawmakers. ECC sponsors a 6-point program of reforms, including changes to County laws and programs that discriminate unfairly against homeowners in community associations compared to the benefits available to homeowners who are not in community associations. It also publishes lists of political candidates who support its programs.

A statewide organization that advocates for the rights of members of all community associations is the Maryland Homeowners' Advocacy Alliance, whose website is [www.md-hoa.org](http://www.md-hoa.org). The Alliance's goal is to protect the rights of homeowners through education, encouraging good governance, civility, the use of best practices, and informed participation in community affairs.

Last but certainly not least is the Conflict Resolution Center of Montgomery County, [www.crcmc.org](http://www.crcmc.org). Individuals as well as association boards and managers can use the Center to defuse and resolve chronic conflicts in community associations—whether between boards and homeowners, between board members themselves, or neighbor versus neighbor. If both parties agree, the Center's trained mediators will work with the parties to resolve the dispute in an amicable fashion. Its services are free.

### A Note from the Editor

This newsletter is voluntarily edited by Peter Drymalski, a former member of the County staff assigned to the CCOC. Any opinions expressed in the signed articles are those of their authors and in the unsigned articles are those of the editor. The opinions do not necessarily reflect the opinions of the CCOC or of Montgomery County. The CCOC appreciates the services of those who have taken the time and effort to share their knowledge with the readers.